

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

Kimberly-Clark Worldwide, Inc. and
Kimberly-Clark Global Sales, LLC,

Plaintiffs,

Case No. 14-C-1466

v.

Judge William C. Griesbach

First Quality Baby Products, LLC,
First Quality Retail Services, LLC, and
First Quality Consumer Products, LLC.

Defendants.

First Quality Baby Products, LLC and
First Quality Consumer Products, LLC,

Counterclaim-Plaintiff,

JURY TRIAL DEMANDED

v.

Kimberly-Clark Corporation,
Kimberly-Clark Worldwide, Inc., and
Kimberly-Clark Global Sales, LLC,

Counterclaim-Defendants.

**FIRST QUALITY’S MOTION FOR SUMMARY JUDGMENT THAT THE ASSERTED
CLAIMS OF U.S. PATENT NO. 8,747,379 ARE INVALID**

Defendants/Counterclaimants First Quality Baby Products, LLC, First Quality Retail Services, LLC, and First Quality Consumer Products, LLC (collectively, “First Quality”) respectfully move this Court pursuant to Fed. R. Civ. P. 56 for summary judgment that Claims 1-8, 10-16, 18, 23-25, and 27-29 (“the Asserted Claims”) of U.S. Patent No. 8,747,379 (“the ‘379 Patent”) are invalid.

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Specifically, First Quality moves for summary judgment that Plaintiffs Kimberly-Clark Worldwide, Inc. and Kimberly-Clark Global Sales, LLC (collectively, “K-C”), are collaterally estopped from arguing that the Asserted Claims of ‘379 Patent are non-obvious. There is no patentable difference between the ‘379 Patent asserted here and its grandparent, U.S. Patent No. 6,849,067 (“the ‘067 Patent”), which this Court invalidated as obvious. Thus, the determinative issues as to whether or not the Asserted Claims are obvious were fully litigated in the previous litigation between the parties.

Additionally, First Quality moves for summary judgment that Asserted Claims are invalid as obvious, under 35 U.S.C. §103, because they merely combine (i) the already obvious combination of an old training pant and a known refastenable seam, with (ii) other features—*e.g.*, printed graphics, a surge layer, containment flaps, and non-stretch side panels—that were already used in prior art training pants. This overwhelming *prima facie* case of obviousness cannot be overcome by any contrary objective evidence K-C might offer, all of which relates to the refastenable seam feature that K-C is estopped from arguing was non-obvious.

As demonstrated in First Quality’s accompanying Memorandum, Statement of Proposed Material Facts, and the Declarations of John Blevins and James Hanson filed in support of this Motion, there is no genuine issue of material fact with respect to invalidity of the Asserted Claims and thus, this Court should grant First Quality’s Motion.

Date: January 23, 2015

s/T. Wickham Schmidt

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**ATTORNEYS FOR DEFENDANTS FIRST
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